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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/660,257	09/12/2000	Don Wiley Smith	22601-P002US	6780

7590

06/05/2002

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EXAMINER

GELLNER, JEFFREY L

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 06/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

SK

Office Action Summary

Application No.

09/660,257

Applicant(s)

SMITH ET AL.

Examiner

Jeffrey L. Gellner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 April 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

PETER M. POON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

f.m.p.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 April 1992 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

Drawings

The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 11 April 2002 have been approved.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-17 and 22-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In Claim 1, line 1, the adjective “established” renders the claim indefinite because there is no objective standard to judge when a tree is established.

In Claim 10, line 1, the adjective “adult” renders the claim indefinite because there is no objective standard to judge when a tree becomes an adult.

In Claim 22, line 1, the adjective “established” renders the claim indefinite because there is no objective standard to judge when a tree is established.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2, 4, 5, 7, 10, 15, and 22-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Mehra-Palta (US 4,417,417).

As to Claim 1, Mehra-Palta discloses a method of treating established (defined as living) distressed tree species (col. 1 lines 10-30; col. 11 lines 21-36), the root system in soil (sterile soil of col. 11 line 24), comprising creating a mixture of fertilizer (nutrients in GD medium, col. 11 lines 21-36; col. 10 lines 24-43) and a growth hormone (NAA, col. 11 lines 24-36) and applied to the root area of the soil to treat the root system of the distressed tree (shoot of col. 11 lines 21-36).

As to Claim 2, Mehra-Palta further discloses NAA (col. 11 lines 21-36).

As to Claim 4, Mehra-Palta further discloses a mixture with at least one powder (defined as components of GD medium, col. 4 lines 5-32).

As to Claim 5, Mehra-Palta further discloses a mixture with at least one liquid (defined as the GD medium before it solidifies, col. 11 lines 21-36; col. 10 lines 24-43).

As to Claim 7, Mehra-Palta further discloses the fertilizer liquid (defined as the GD medium before it solidifies, col. 11 lines 21-36; col. 10 lines 24-43).

As to Claim 10, Mehra-Palta discloses a mixture capable of treating adult distressed tree species (col. 1 lines 10-30; col. 11 lines 21-36) comprising fertilizer (nutrients in GD medium, col. 11 lines 21-36; col. 10 lines 24-43) and a growth hormone, NAA (col. 11 lines 24-36).

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As to Claim 15, Mehra-Palta further discloses the fertilizer liquid (defined as the GD medium before it solidifies, col. 11 lines 21-36; col. 10 lines 24-43).

As to Claims 22 and 23, Mehra-Palta discloses a kit for treating an established (defined as living) distressed tree species (col. 1 lines 10-30; col. 11 lines 21-36) comprising a mixture of fertilizer (nutrients in GD medium, col. 11 lines 21-36; col. 10 lines 24-43) and a growth hormone, NAA (col. 11 lines 24-36); and a container (container is inherent in the method disclosed at col. 11 lines 21-36).

As to Claim 24, Mehra-Palta further discloses instruction (inherent in the scientific method to record materials and methods used in research).

As to Claim 25, Mehra-Palta further discloses applying to the root area of distressed tree (shoot of col. 11 lines 21-36).

Claims 18 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Dale (Fred Dale Special to the Star).

As to Claim 18, Dale discloses a method of treating a distressed (defined as distressed due to the change in weather in April at page 1st line of Body) trees (page 1st line of Body) comprising a hole (inherent in washing in soil about the roots of page 2 1st line) and applying of a fertilizer and a root growth hormone (page 2 line 2).

As to Claim 21, Dale further discloses soaking (inherent in letting soil dry) and drying the soil (page 2 1st para.).

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 6, 8, 9, 11-14, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mehra-Palta (US 4,417,417).

As to Claim 3, the limitations of Claim 1 are disclosed as described above. Not disclosed is the distressed tree a Post Oak. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Mehra-Palta by using Post Oak so as to clonally propagate this species when needed.

As to Claim 6, the limitations of Claim 1 are disclosed as described above. Not disclosed is the fertilizer with specific N,P, and K ranges as percent by weight. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Mehra-Palta by using the specific ranges of NPK in Claim 6 to optimize the system and promote healthy root growth.

As to Claims 8 and 9, the limitations of Claim 1 are disclosed as described above. Not disclosed is the use of a fungicide, tetramethylthiuramdisulfide. Examiner takes official notice that it is old and well known in the tissue culture art to use a fungicide in growth media to inhibit fungus growth. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Mehra-Palta by using a fungicide in the growth medium to inhibit fungus growth so as to enhance plant survival.

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As to Claims 11-13, the limitations of Claim 10 are disclosed as described above. Not disclosed are the specific concentrations (by weight or dosage) of growth hormone of Claims 11-13. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the mixture of Mehra-Palta by using the specific growth hormone concentrations of Claims 11-13 to optimize the system and promote healthy root growth.

As to Claim 14, the limitations of Claim 10 are disclosed as described above. Not disclosed is the fertilizer with specific N,P, and K ranges as percent by weight. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Mehra-Palta by using the specific ranges of NPK in Claim 14 to optimize the system and promote healthy root growth.

As to Claims 16 and 17, As to Claims 8 and 9, the limitations of Claim 1 are disclosed as described above. Not disclosed is the use of a fungicide, tetramethylthiuramdisulfide. Examiner takes official notice that it is old and well known in the tissue culture art to use a fungicide in growth media to inhibit fungus growth. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Mehra-Palta by using a fungicide in the growth medium to inhibit fungus growth so as to enhance plant survival.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dale (Fred Dale Special to The Star) in view of Green Light Rootone (found at www.greenlightco.com).

As to Claim 19, the limitations of Claim 18 are disclosed as described above. Not disclosed is the use of NAA as the root hormone. Green Light Rootone however is a root

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hormone which is NAA. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Dale by using Rootone as disclosed by Green Light Rootone depending upon cost and availability.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dale (Fred Dale Special to The Star).

As to Claim 20, the limitations of Claim 18 are disclosed as described above. Not disclosed is using a water jet to create the hole. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Dale by using a water jet so as to make the job of washing roots easier and quicker.

Response to Arguments

Applicant's arguments filed 11 April 2002 have been fully considered but they are not persuasive. Applicant argues that Mehra-Palta is concerned with starting new plants while Applicant's application is concerned with saving established plants in a soil environment. Examiner considers the plants of Mehra-Palta to be established and to be in soil.

Conclusion

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose telephone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

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If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The fax phone numbers for the Technology Center where this application or proceeding is assigned are 703.305.7687, 703.305.3597, and 703.306.4195.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.



Jeffrey L. Gellner



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